resent it in a particular transaction, it will be estopped to deny the apparent authority with which it has clothed him, to the prejudice of persons dealing with him as agent of the corporation.[7] But making an affidavit for a corporation is not considered as within the ordinary scope of authority of corporate agents.

The latter part of the new Virginia statute is broad enough to cover all cases, whether the principal be a natural or an artificial person. If the affidavit has been made by one purporting to act as the agent of another, the statute raises a *prima facie* presumption that he was authorized to make the affidavit in behalf of the principal, and places the burden of proving the contrary on him who denies the agency. It would seem, therefore, that the statute has modified a well-settled principle of the law of agency in so far as the authority of an agent to make an affidavit for his principal is concerned. P. M. P

ATTORNEY AND CLIENT—AGREEMENT FOR COMPENSATION.—*Bruce's Ex'x.* v. *Bibb's Ex'x.* (Va.), 105 S. E. 570.—Until an attorney undertakes the business of his client, the parties deal at arm's length,[1] and transactions between them are valid, in general, wherever they would be valid between other parties. Once the counsel agrees to serve as such, however, a relation of great confidence and trust,[2] similar to that between guardian and ward and trustee and *cestui que trust*,[3] springs up between them. The relation of the parties being one which opens wide the door to the exercise of fraudulent and undue influence on the part of the attorney, it is universally held that transactions between such parties will be closely scrutinized by the courts and pronounced voidable on the part of the client unless obviously fair and just.[4] It is generally held, however, that the mere existence of the relation between, and the entrance into a transaction by the parties is not enough. There must be, actually or presumptively, some abuse of confidence on the part of the attorney.[5]

There are a number of States which go further and hold that these transactions are not merely to be closely studied with an eye to the discovery of fraud or oppression, but that they are presumptively fraudulent[6] and that the burden of proof is on the

---

[7] Mahoney Min. Co. *v.* Anglo-Californian Bank, 104 U. S. 192; McNeil *v.* Boston Chamber of Commerce, 154 Mass. 277, 28 N. E. 245, 13 L. R. A. 559; Hooe *v.* Oxley, 1 Wash. (Va.) 19, 1 Am. Dec. 425; Ashley Wire Co. *v.* Illinois Steel Co., 164 Ill. 149, 45 N. E. 410, 56 Am. St. Rep 187.

[1] See Elmore *v.* Johnson, 143 Ill. 513, 32 N. E. 413.

[2] Cooley *v.* Miller, 156 Cal. 510, 105 Pac. 981.

[3] Yonge *v.* Hooper, 73 Ala. 119.

[4] 6. C. J. 686.

[5] See Miles *v.* Ervin, 6 S. C. Eq. 524, 16 Am. Dec. 623.

[6] Cooley *v.* Miller, *supra.*

attorney to prove the absence of undue influence [7] by the clearest and most convincing proof of good faith. The leading case of *Thomas* v. *Turner* [8] puts Virginia in this group.

That case, together with the later case of *Cullup* v. *Leonard*,[9] determined the state of the law in Virginia when the case of *Bruce's Ex'x.* v. *Bibb's Ex'x.*[10] arose. § 3428 of the Code of Virginia, 1919, providing that an attorney may fix the amount of his compensation by contract, had been held inapplicable after the relation of attorney and client had been entered into.[11] In both cases agreements advantageous to counsel were held voidable, but in both cases the presumption of undue influence was based upon the old age and extreme ignorance of the female clients. In the late case referred to, however, the facts were very different.

There both the attorney and client were men of good health and sound mind. The attorney was a man of considerable prominence and undoubted integrity. The client was well able to look out for his interests, and being of a somewhat litigious nature, was perfectly familiar with court proceedings. Furthermore the relation of attorney and client had long existed between them, and they had been lifelong friends. Under these circumstances, the client executed a bond payable to the attorney out of his estate at the time of his death, the amount thereof being $5000, and the consideration therefor being the past, present and future services of the attorney as such. The subsequent death of the attorney was quickly followed by that of his client. Payment of the bond being contested, it was found that the amount thereof came to one fourth of the client's estate and exceeded by approximately $1500 the actual value of services rendered plus interest due. The court, disclaiming suspicion of actual fraud, held the bond voidable and granted recovery only on a *quantum meruit* basis.

To sustain the view that this case is incorrectly decided, some convincing arguments may be advanced. It has been held that the rule as to the voidability of transactions between attorney and client, being an equity rule, should not be rigorously applied where, because of the death of the attorney, full and plenary proof is impossible.[12] Moreover, it cannot be said that the case fails to measure up to the criterion laid down in *Thomas* v. *Turner, supra,* where it was required to be shown that the client had the advice he presumably would have had, and is no worse off than he presumably would have been, if he had consulted a

[7] See Manheim *v.* Woods, 213 Mass. 537, 100 N. E. 747.
[8] 87 Va. 1, 12 S. E. 149.
[9] 97 Va. 256, 33 S. E. 611.
[10] (Va.) 105 S. E. 570.
[11] Thomas *v.* Turner, *supra.*
[12] Whiting *v.* Davidge, 23 App. D. C. 156; Boyd *v.* Daily, 85 App. Div. 581, 85 N. Y. Supp. 539. In these cases the relation was inchoate when the bargain was struck, but the court held that even here the relation was confidential and great good faith required.

competent adviser who had no selfish end in view. In the case under discussion, the client needed no outside advice. And it is apparent that the bargain might easily have been to the advantage of the client, had the litigious trait of his character held out and his counsel lived longer. As it was, the disparity between the compensation and the value of the services as found by the court was not appalling. And how can the value of legal services be accurately measured in court after both attorney and client are dead?

These objections would seem to be outweighed by a consideration of the value of such a holding. The *quantum meruit* valuation may err as well on one side as the other. And the case serves to emphasize in high degree the nature of the relation between attorney and client, which perhaps may be termed a sacred one. However true the current saying that "The practice of law is no longer a profession, but merely a trade" may be, as applied to the nature of the attorney's work, the case stands firmly for the proposition that as to the lawyer's relation to his client the practice is not merely a profession, but one of exceptionally high character. The significance of the case in this connection is brought into clearer relief when coupled with the ruling which would undoubtedly have been handed down had the services been more valuable than the agreed compensation. Unquestionably, the attorney would have been limited to the amount of the bond.[13] The case under discussion certainly goes the limit. It serves, however, not only to protect the public from the sharp dealings of overreaching practitioners, but also to insure a high regard for the honor of their calling among the members of the profession itself.[14]

T. L. P.

HOW TO COME TO ISSUE IN AN ACTION OF DEBT ON A BOND CONDITIONED UNDER § 6262 VA. CODE, 1919.—§ 6262 of the Code of 1919 provides:

> "In an action on an annuity bond, or a bond for money payable by installments, where there are further payments of the annuity, or further installments to become due after the commencement of the action, or in any other action for a penalty for the non-performance of any condition, covenant, or agreement, the plaintiff may assign as many breaches as he may think fit, and shall, in his declaration or scire facias assign the specific breaches for which the action is brought, or the scire facias is sued out."

---

[13] McIlvoy *v.* Russell, 15 Ky. Law Rep. 740, 24 S. W. 3; Walsh *v.* Board, 17 Mont. 413, 43 Pac. 180.

[14] For further authorities upon this general subject, see 83 Am. St. Rep. 159, and 2 R. C. L. 1036-1046.